



Docket No.: M4065.0743/P743  
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:  
Steven T. Harshfield, et al.

Application No.: 09/853,233

Group Art Unit: 2823

Filed: May 11, 2001

Examiner: W. Coleman

For: PCRAM MEMORY CELL AND METHOD  
OF MAKING SAME

#13/Response  
8/11/03  
V/S

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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Dear Sir:

The election of species requirement mailed on June 18, 2003 states that the claims in the application are directed to two patentably distinct species: a memory device containing a layer of chalcogenide material and a memory device containing a variable resistance material. In response to the election requirement, Applicants hereby elect the "species" covered by claims 82-89, directed to a memory device containing a variable resistance material. This election is made with traverse.

Applicants traverse the election requirement because the recited memories with variable resistance materials is a generic class of devices of which memories with chalcogenide materials is one type. In other words, the former is a genus and the latter is a species within that genus. Thus, the two sets of claims have a genus-species relationship, and not a species-species relationship.

MPEP § 806.03 instructs that

“Where the claims of an application define the same essential characteristics of a single disclosed embodiment of an invention, restriction therebetween should never be required. This is because the claims are but different definitions of the same disclosed subject matter, varying in breadth or scope of definition.” (Emphasis added).

Furthermore, MPEP § 806.04(f) states that “[c]laims to be restricted to different species must be mutually exclusive.”

In this case, the two identified “species” are not mutually exclusive. The claimed memory devices containing a chalcogenide material are a specific type of memory device containing a variable resistance material. Since memory devices containing chalcogenide materials are encompassed by the broader category of memory devices containing variable resistance materials, the claims in the application vary only in breadth and/or scope.

In a telephone conversation with the Examiner on June 30, 2003, the Examiner agreed with Applicants’ representative that the variable resistance memory devices are generic. Applicants’ representative pointed out that item 2 on page 2 of the election of species requirement states that claims 1-3 and 5-7 were considered to be considered generic, but that these claims are directed to a memory device comprising a chalcogenide material. Claims 82-89, on the other hand, recite a variable resistance material. Upon noting these facts, the Examiner then stated that independent claims 82, 84-86 and 89 should have been indicated to be generic instead of claims 1-3 and 5-7. Regardless of which claims are considered to be generic in this case, the instant election of species requirement presents the confusing situation in which the very claims which are generic are also included among the claims corresponding to one of the “species” set forth in item 1 of the election of species requirement.

For each of the foregoing reasons, Applicants respectfully submit that the election of species requirement is improper. Accordingly, withdrawal of the election

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requirement and examination on the merits of all of pending claims 1-3, 5-21, 23-26, 28-33, 35-40, 42-44 and 82-29 is courteously requested.

Dated: <sup>July 1</sup>~~June 30~~, 2003

Respectfully submitted,

By 

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